

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

[REDACTED]

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NO.: 01-18

DUE PROCESS HEARING

FINAL ORDER

2704

Jack E. Seaman
Administrative Law Judge
611 Commerce Street, Suite

Nashville, Tennessee 37203
615/255-0033
Prof. Resp. No. 4058
August 13, 2001

FINAL ORDER

Case No. 01-18

This proceeding involves a deaf 13-year-old male student who is at grade level and making grades of A's and B's in the middle school general education classes. His Individual Education Program (IEP) includes a provision that "in the regular class" the student "needs a certified educational ASL interpreter to succeed educationally." The IEP provides with regard to "extracurricular and nonacademic activities" that the student "can participate/will need cer. ASL interpreter." His mother, a certified ASL interpreter, was hired by the school system to be the student's interpreter when he moved into the area and enrolled at the school in the beginning of the last school year. The father/parents requested a due process hearing because the school system indicated it would not be rehiring the mother as interpreter for the student; but, instead, would hire as a replacement a person who provided some interpreter services for the student during the past year.

Issue

The issue for determination is whether the school system is required, as requested by the father/parents, to employ a named

individual, a Certified American Sign Language Interpreter who is also the student's mother, to be the student's primary and full time interpreter until a time in the future to be determined by the student and the father.

The father's/parents' position is that it is in the student's best interest for the mother, because of her qualifications and the student's demonstrated performance, to continue to be employed as the interpreter for the student.

The school system's position is that under the applicable law its obligation is only to provide a qualified interpreter so as to enable the student to meaningfully benefit from the educational program and it is neither required to hire the best, or most qualified, personnel nor required to hire any particular individual, even if preferred or requested by the parents. Further, the school system contends it would be in the thirteen-year-old student's best interest not to be assisted by a family member.

Due Process Hearing

Evidence presented at the Due Process Hearing included the testimony of several school personnel, a part-time contract interpreter for the school, and the father. Since the hearing, the parties have presented testimony of an interpreter from an interpreter service contracting with the school system and testimony of the student by depositions taken subsequent to the

hearing.

Testimony presented by the parent, including school personnel, commended the mother for her performance as interpreter for this student. Although there is some conflicting testimony, it is apparent that the mother provided a valuable service for the school system and the student, her son, as interpreter. Some of the school personnel, and the interpreters presented by the school system as witnesses, are of the opinion that it would be more appropriate for someone other than a family member to serve as interpreter for a student. At least one school administrator questions whether the student would have obtained the grades of A's and B's without his mother as interpreter.

A part-time contract interpreter with the school testified she had interpreted for this student. She testified that the student was "smart, extremely smart." She did not believe it detrimental for a student to have different interpreters during the school week. However, she did believe it would be necessary for her, or any other interpreter, to have a period of adjustment when they undertook to interpret for a student and she did not know how long it would take for her and this student to adjust to each other.

The supervisor of special education for the school system testified that the mother had been hired as interpreter when the student first enrolled in their system because no other interpreter with the necessary certification was available. She

testified that another interpreter had been hired with the intention of replacing the mother but at a meeting it was agreed between the school system and the parents that the replacement would not occur until after the end of the then current school year. She believed the person hired to be interpreter for this student was certified as an ASL interpreter, Level IV, although neither records showing certification nor the interpreter were available at the due process hearing.

The hearing ended with agreement that the school system would try to arrange to take the deposition of the interpreter contracted by the school system for this student; however, that deposition was never taken and, instead, the parties agreed to take the depositions of an interpreter with an interpreter service for the deaf who was contracting with the school system to provide at least a part-time interpreter for this student and, also, to take the deposition of the student.

The representative of the interpreter service favored a non-parent as interpreter and his agency had agreed to provide a part-time qualified interpreter for the school system and this student.

The student preferred only one interpreter and was concerned that any interpreter selected by the school system, based upon his experiences with other interpreters, might not be with him all the times he thought necessary and not be able to communicate with him. The student likes school, makes mostly B's and some A's, and spends about 2½ hours, on average, doing homework at home at

night.

Discussion

This case concerns an intelligent student who is deaf. He appears to like school and have a good attitude about what is required of him to perform well as a student. His parents are concerned about, and involved in, his educational program and want very much for him to earn good grades and be successful. The student requires the services of an interpreter as part of his educational program. The parents believe the mother is the best available interpreter for this student. The school system takes the position that the mother continuing to be the interpreter is not required and would not be appropriate. The school system intends to provide two part-time interpreters for the student this school year.

The school system points out that the student has been provided a qualified interpreter and has made good progress the one year in this school system. This is not disputed; however, the interpreter provided by the school system this one school year is the mother of the student and the person sought by the parents to be retained as the interpreter for the student.

It is undisputed that the school system is required to employ qualified persons to provide special education and related services for eligible students. See Individuals with Disabilities Act (IDEA), 20 U.S.C. 1400 et.seq. No provision of state or

federal law requiring a school system to employ the interpreter requested or preferred by a student's parents has been brought to the attention of the Administrative Law Judge.

The U.S. Supreme Court has stated "the primary responsibility for formulating the education to be accorded a handicapped child . . . was left by the Act [IDEA] to state and local educational agencies in cooperation with the parents or guardian of the child." Board of Education v. Rowley, 458 U.S. 176, 207, 73 L.Ed.2d 690, 712, 102 S.Ct. 3034 (U.S. 1982). School systems must provide individualized education to enable the student to obtain educational benefit, achieve passing grades, and advance from grade to grade, but are not required to provide the best possible education for children with disabilities under IDEA. Board of Education v. Rowley, supra. See Doe v. Board of Education of Tullahoma City Schools, 9 F.3d 455 (6th Cir. 1993); Springdale School District v. Grace, 693 F.2d 41 (8th Cir. 1982), cert. denied 461 U.S. 927 (1983).

Neither the procedural requirements for developing the IEP nor the substantive provisions of the IEP have been questioned. The parents have participated in the IEP development process and have been involved in ongoing consideration of this student's education program. The parents' concern is directed to the qualifications of any proposed interpreter and whether the mother is the best possible interpreter for the student. Even if the mother were the most qualified and/or the best interpreter for

this student, the law would not require the school system to employ her. Further, the evidence presented does not convince the Administrative Law Judge that employment of another qualified interpreter, or interpreters, by the school system would deprive the student of the free appropriate public education (FAPE) to which the student is entitled under IDEA.

The student's educational experience should not be adversely affected by a change in interpreters. Although at least one school administrator appeared to doubt whether the student could obtain grades of A's and B's if his mother was not his interpreter, the testimony of other witnesses, and the deposition testimony of the student, convince the Administrative Law Judge that the student will continue to do well if he and his family continue their efforts and if the school provides the student with a qualified interpreter, or interpreters, who spend the necessary time with the student to be able to communicate with him and fulfill the requirements for the related services under IDEA.

As long as the school system provides qualified personnel and implements the IEP, the selection of individual personnel will not be subject to challenge unless the personnel selection denies the student a free appropriate public education (FAPE) as required under IDEA.

Findings and Conclusions

The school system is not required to employ the student's

mother as interpreter for the student even though requested and preferred by the parents.

School systems normally have the authority to employ, retain, and/or terminate teachers and other personnel to provide special education and related services to eligible students. Proof has not established that the circumstances of this case, and/or applicable law, would require the school system to defer to the parent's request.

This order does not determine whether employment of any specific individuals would be in compliance with the student's IEP.

Conclusion

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. The school system is not required to hire the interpreter requested and/or preferred by the parent(s).

Entered this 13th day of August, 2001.

JACK E. SEAMAN Prof. Resp. #4058
ADMINISTRATIVE LAW JUDGE
611 Commerce Street, Suite 2704
Nashville, Tennessee 37203
615/255-0033

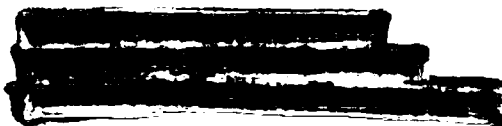
NOTICE

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

CERTIFICATE OF SERVICE

This order is being sent by facsimile this date. Additionally, I hereby certify that a true and copy of the foregoing document has been sent by mail, with sufficient postage prepaid, to the following on this 13th day of August, 2001:

Melinda Baird, Esq.
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Knoxville, Tennessee 37919-5510



JACK E. SEAMAN

c: Bill Ward, Esq.
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